UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE:	)	
	)	
DAVID R. MALPASS	)	CASE NO. 08-12109
DAWN M. MALPASS	)	CHAPTER 7
Debtors	)	
	)	
	)	
NANCY J. GARGULA	)	
UNITED STATES TRUSTEE	)	Adv. Proc. No.
Plaintiff	)	
	)	
v.	)	
	)	
DAVID R. MALPASS	)	
Defendant	)	

COMPLAINT TO DENY DISCHARGE UNDER 11 U.S.C. § 727

The Plaintiff, Nancy J. Gargula, United States Trustee for Region 10, by Ellen L. Triebold, Trial Attorney, brings this action pursuant to 11 U.S.C. § 727(a)(8) to deny the discharge of the Debtor, David R. Malpass, and for such other relief as may be appropriate.

PARTIES

1. The Plaintiff is Nancy J. Gargula, the United States Trustee for Region 10, by Ellen L. Triebold, Trial Attorney, with a business address of Office of the United States Trustee, 100 East Wayne Street, Suite 555, South Bend, IN 46601.

2. The Defendant is David R. Malpass, who filed his joint Chapter 13 petition on July 2, 2008. His address as reported on his petition is 432 Treeline Cove, Fort Wayne, IN 46825.

JURISDICTION AND VENUE

3. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334, 28 U.S.C. § 157(a), 11 U.S.C. § 105(a), and Fed. R. Bankr. P. 7001(4). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(J).

4. The Plaintiff is statutorily empowered to monitor the administration of cases under Chapter 7, 11, 12 and 13 of the Bankruptcy Code under 28 U.S.C. § 586(a)(3). The Plaintiff has standing to raise and to appear and be heard on any issue in any bankruptcy case or proceeding. 11 U.S.C. § 307.

5. Venue in this Court is proper pursuant to 28 U.S.C. § 1409(a).

FACTUAL BACKGROUND

6. On September 30, 2002, the Defendant filed his voluntary petition under Chapter 7 of the Bankruptcy Code, case number 02-14060.

7. On January 8, 2003, this Court issued the Defendant a Discharge in his Chapter 7 case, case number 02-14060.

8. On July 2, 2008, the Defendant filed his voluntary joint petition under Chapter 13 of the Bankruptcy Code, case number 08-12109.

9. On or about October 13, 2008, the Defendant's Chapter 13 case was converted to Chapter 7.

COUNT I

10. The Plaintiff incorporates the allegations contained within paragraphs 1 through 9.

11. Section 727(a)(8) of the Bankruptcy Code provides, in relevant part, that the Court shall not grant a discharge in a Chapter 7 case if a Debtor has been granted a discharge under § 727 in a case commenced within eight years before the date of the filing of the petition.

12. Pursuant to § 348, conversion of a case from one chapter to another does not, in general, effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

13. The Defendant's Chapter 7 discharge should be denied because he obtained a discharge in a case filed fewer than eight years ago.

WHEREFORE, The United States Trustee, Plaintiff, respectfully requests that the discharge of the Defendant, be denied under 11 U.S.C. § 727(a)(8), and requests all other proper relief.

Respectfully submitted,

NANCY J. GARGULA
UNITED STATES TRUSTEE

By: /s/ Ellen L. Triebold
Ellen L. Triebold
Trial Attorney

Office of the U.S. Trustee
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(574) 236-8105, ext. 118
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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Complaint has been made by either the Bankruptcy Court's ECF Email System or by United States Mail, First Class, postage prepaid, on **October 30, 2008**, addressed to the following:

David R. Malpass
432 Treeline Cove
Fort Wayne, IN 46825

Frederick W. Wehrwein
1910 St. Joe Center Road, #52
Fort Wayne, IN 46825

Dustin M. Roach
Van Gilder & Trzynka, P.C.
436 E. Wayne Street
Fort Wayne, IN 46802

/s/ Ellen L. Triebold